

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Special Session
2003

CHAPTER 5

HOUSE BILL 2019

AN ACT

AMENDING SECTIONS 5-395.01, 5-396 AND 5-397, ARIZONA REVISED STATUTES; AMENDING TITLE 5, CHAPTER 3, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 5-398.01; AMENDING SECTIONS 28-1381, 28-1382 AND 28-1383, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 4, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-1389; AMENDING SECTIONS 28-8284, 28-8286, 28-8287 AND 28-8288, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 25, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-8292; AMENDING TITLE 41, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5; MAKING APPROPRIATIONS; RELATING TO CORRECTIONAL FACILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-395.01, Arizona Revised Statutes, is amended to
3 read:

4 5-395.01. Operating or in actual physical control of a
5 motorized watercraft while intoxicated;
6 classification; penalties

7 A. A person who is convicted of a violation of section 5-395 is guilty
8 of a class 1 misdemeanor. THE PERSON SHALL PAY A FINE OF NOT LESS THAN TWO
9 HUNDRED FIFTY DOLLARS. In addition to any other penalties under this
10 section, the judge shall order the person to complete alcohol or other drug
11 screening that is provided by a facility approved by the department of health
12 services or a probation department. If a judge determines that the person
13 requires further alcohol or other drug education or treatment, the person may
14 be required pursuant to court order to obtain alcohol or other drug education
15 or treatment under the court's supervision from an approved facility. The
16 judge may review an education or treatment determination at the request of
17 the state or the defendant or on the judge's initiative. The person shall
18 pay the costs of the screening, education or treatment unless the court
19 waives part or all of the costs.

20 B. EXCEPT AS PROVIDED IN SECTION 5-398.01, the court may suspend any
21 imposed sentence for a first violation of section 5-395 if the person
22 completes a court ordered alcohol or other drug screening, education or
23 treatment program. If the person fails to complete the court ordered alcohol
24 or other drug screening, education or treatment program and has not been
25 placed on probation, the court shall issue an order to show cause to the
26 defendant as to why the remaining jail sentence should not be served.

27 C. A court may order a person sentenced pursuant to this section to
28 perform community service.

29 D. Notwithstanding subsection B of this section, if within a period
30 of sixty months a person is convicted of a second violation of section 5-395
31 or is convicted of a violation of section 5-395 and has previously been
32 convicted of an act in another state that if committed in this state would
33 be a violation of section 5-395, the person shall be sentenced to serve not
34 less than ninety days in jail, thirty days of which shall be served
35 consecutively, and the person is not eligible for probation or suspension or
36 OF execution of sentence unless the entire sentence has been served, except
37 that the judge may suspend at the time of sentencing all but thirty days of
38 the sentence if the person completes a court ordered alcohol or other drug
39 screening, education or treatment program. If the person fails to complete
40 the court ordered alcohol or other drug screening, education or treatment
41 program and has not been placed on probation, the court shall issue an order
42 to show cause as to why the remaining jail sentence should not be
43 served. The judge shall order the person to pay a fine of not less than five
44 hundred dollars.

1 E. The dates of the commission of the offense are the determining
2 factor in applying the sixty month provision of subsection D of this section,
3 irrespective of the sequence in which the offenses were committed. A second
4 violation for which a conviction occurs as provided in this section shall not
5 include a conviction for an offense arising out of the same series of acts.

6 F. If a person is referred to a screening or treatment facility, that
7 facility shall report to the court whether the person has successfully
8 completed the screening, education or treatment program.

9 G. Any political subdivision processing or utilizing the services of
10 a person ordered to perform community service pursuant to this section does
11 not incur any civil liability to the person ordered to perform community
12 service as a result of these activities unless the political subdivision or
13 its agent or employee acts with gross negligence.

14 H. After a person who is sentenced pursuant to subsection B of this
15 section has served twenty-four consecutive hours in jail or after a person
16 who is sentenced pursuant to subsection D of this section has served
17 forty-eight consecutive hours in jail and after receiving confirmation that
18 the person is employed or is a student, the court, on pronouncement of any
19 jail sentence under this section, may provide in the sentence that the person
20 may be permitted, if the person is employed or is a student and can continue
21 the person's employment or studies, to continue such employment or studies
22 for not more than twelve hours per day nor more than five days per week, and
23 the remaining day, days or parts of days shall be spent in jail until the
24 sentence is served. The person shall be allowed out of jail only long enough
25 to complete the actual hours of employment or studies and no longer.

26 I. A person sentenced pursuant to this section is eligible for a home
27 detention program pursuant to the provisions of section 9-499.07, subsections
28 M through R or section 11-459, subsections L through Q.

29 J. The court shall allow the allegation of a prior conviction or other
30 pending charge of a violation of section 5-395 filed twenty or more days
31 before the date the case is actually tried and may allow the allegation of
32 a prior conviction or other pending charge of a violation of section 5-395
33 filed any time before the date the case is actually tried, provided that when
34 the allegation is filed this state must make available to the defendant a
35 copy of any information obtained concerning the prior conviction or other
36 pending charge. Any conviction may be used to enhance another conviction
37 irrespective of the dates on which the offenses occurred within the sixty
38 month provision.

39 K. If a person is placed on probation for violating section 5-395, the
40 probation shall be supervised unless the court finds that supervised
41 probation is not necessary or the court does not have supervisory probation
42 services.

43 L. PERSONS CONVICTED PURSUANT TO SECTION 5-395 SHALL PAY AN ADDITIONAL
44 ASSESSMENT OF FIVE HUNDRED DOLLARS OR FOR A SECOND VIOLATION PURSUANT TO
45 SUBSECTION D OF THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE

1 THOUSAND TWO HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN
2 THE PRISON CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651.
3 THESE ASSESSMENTS ARE NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION
4 OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT
5 THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN
6 A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY
7 TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED
8 TO THE STATE TREASURER.

9 Sec. 2. Section 5-396, Arizona Revised Statutes, is amended to read:

10 5-396. Aggravated operating or actual physical control of
11 motorized watercraft while under the influence of
12 intoxicating liquor or drugs; classification

13 A. A person is guilty of aggravated operating or actual physical
14 control of a motorized watercraft that is underway while under the influence
15 of intoxicating liquor or drugs if the person commits a third or subsequent
16 violation of section 5-395 or 5-397 or this section or is convicted of a
17 violation of section 5-395 or 5-397 or this section and has previously been
18 convicted of any combination of convictions of section 5-395 or 5-397 or this
19 section or acts committed in another state that if committed in this state
20 would be a violation of section 5-395 or 5-397 or this section within a
21 period of sixty months.

22 B. The dates of the commission of the offenses are the determining
23 factor in applying the sixty month provision provided in subsection A of this
24 section regardless of the sequence in which the offenses were committed. For
25 purposes of this section, a third or subsequent violation for which a
26 conviction occurs does not include a conviction for an offense arising out
27 of the same series of acts.

28 C. Aggravated operating or actual physical control of a motorized
29 watercraft that is underway while under the influence of intoxicating liquor
30 or drugs is a class 4 felony.

31 D. Notwithstanding section 41-1604.06, a person who is convicted under
32 subsection A of this section and who within a sixty month period has been
33 convicted of two prior violations of section 5-395 or 5-397 or this section,
34 or acts committed in another state that if committed in this state would be
35 a violation of section 5-395 or 5-397 or this section, is not eligible for
36 probation, pardon, commutation or suspension of sentence or release on any
37 other basis until the person has served not less than four months in prison.

38 E. Notwithstanding section 41-1604.06, a person who is convicted under
39 subsection A of this section and who within a sixty month period has been
40 convicted of three or more prior violations of section 5-395 or 5-397 or this
41 section, or acts committed in another state that if committed in this state
42 would be a violation of section 5-395 or 5-397 or this section, is not
43 eligible for probation, pardon, commutation or suspension of sentence or
44 release on any other basis until the person has served not less than eight
45 months in prison.

1 F. A person who is convicted of a violation of this section and who
2 is placed on probation shall attend and complete alcohol or drug screening,
3 counseling and education from an approved facility, and if ordered by the
4 court, treatment from an approved facility. If the person fails to comply
5 with the provisions of this subsection, in addition to the provisions of
6 section 13-901 the court may order that the person be incarcerated as a term
7 of probation as follows:

8 1. For a person sentenced pursuant to subsection D of this section,
9 for an individual period of not more than four months and a total period of
10 not more than one year.

11 2. For a person sentenced pursuant to subsection E of this section,
12 for an individual period of not more than eight months and a total period of
13 not more than two years.

14 G. The time that a person spends in custody pursuant to subsection D,
15 E or F of this section shall not be counted toward the sentence imposed if
16 the person's probation is revoked and the person is sentenced to prison
17 following revocation of probation.

18 H. A PERSON CONVICTED OF A VIOLATION OF THIS SECTION SHALL PAY A FINE
19 OF NOT LESS THAN SEVEN HUNDRED FIFTY DOLLARS.

20 I. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, PERSONS
21 CONVICTED PURSUANT TO THIS SECTION SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE
22 THOUSAND FIVE HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE
23 PRISON CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS
24 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
25 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
26 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
27 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
28 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
29 TREASURER.

30 Sec. 3. Section 5-397, Arizona Revised Statutes, is amended to read:

31 5-397. Operating or in actual physical control of a motorized
32 watercraft while under the extreme influence of
33 intoxicating liquor; trial by jury; sentencing;
34 classification; definition

35 A. It is unlawful for a person to operate or be in actual physical
36 control of a motorized watercraft that is underway within this state if the
37 person has an alcohol concentration of 0.15 or more within two hours of
38 operating or being in actual physical control of the motorized watercraft and
39 the alcohol concentration results from alcohol consumed either before or
40 while operating or being in actual physical control of the motorized
41 watercraft.

42 B. A person who is convicted of a violation of this section is guilty
43 of operating or being in actual physical control of a motorized watercraft
44 while under the extreme influence of alcohol.

1 C. At the arraignment, the court shall inform the defendant that the
2 defendant may request a trial by jury and that the request, if made, shall
3 be granted.

4 D. A person who is convicted of a violation of this section:

5 1. Shall be sentenced to serve not less than thirty consecutive days
6 in jail and is not eligible for probation or suspension of execution of
7 sentence unless the entire sentence is served.

8 2. Shall pay a fine of not less than two hundred fifty dollars.

9 3. May be ordered by a court to perform community service.

10 4. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE
11 DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS
12 FUND ESTABLISHED BY SECTION 41-1651. THIS ASSESSMENT IS NOT SUBJECT TO ANY
13 SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE
14 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY
15 TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL
16 TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
17 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

18 E. Notwithstanding subsection D, paragraph 1 of this section, at the
19 time of sentencing the judge may suspend all but ten days of the sentence if
20 the person completes a court ordered alcohol or other drug screening,
21 education or treatment program. If the person fails to complete the court
22 ordered alcohol or other drug screening, education or treatment program and
23 has not been placed on probation, the court shall issue an order to show
24 cause to the defendant as to why the remaining jail sentence should not be
25 served.

26 F. If within a period of sixty months a person is convicted of a
27 second violation of this section or is convicted of a violation of this
28 section and has previously been convicted of a violation of section 5-395 or
29 5-396 or an act in another jurisdiction that if committed in this state would
30 be a violation of this section or section 5-395 or 5-396, the person:

31 1. Shall be sentenced to serve not less than one hundred twenty days
32 in jail, sixty days of which shall be served consecutively, and is not
33 eligible for probation or suspension of execution of sentence unless the
34 entire sentence has been served.

35 2. Shall pay a fine of not less than five hundred dollars.

36 3. May be ordered by a court to perform community service.

37 4. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
38 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON
39 CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS
40 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
41 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
42 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
43 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
44 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
45 TREASURER.

1 G. Notwithstanding subsection F, paragraph 1 of this section, at the
2 time of sentencing, the judge may suspend all but sixty days of the sentence
3 if the person completes a court ordered alcohol or other drug screening,
4 education or treatment program. If the person fails to complete the court
5 ordered alcohol or other drug screening, education or treatment program and
6 has not been placed on probation, the court shall issue an order to show
7 cause as to why the remaining jail sentence should not be served.

8 H. In applying the sixty month provision of subsection F of this
9 section, the dates of the commission of the offense shall be the determining
10 factor, irrespective of the sequence in which the offenses were committed.

11 I. A second violation for which a conviction occurs as provided in
12 this section shall not include a conviction for an offense arising out of the
13 same series of acts.

14 J. A person who is convicted of a violation of this section is guilty
15 of a class 1 misdemeanor.

16 K. For the purposes of this section, "alcohol concentration" means
17 grams of alcohol per one hundred milliliters of blood or grams of alcohol per
18 two hundred ten liters of breath.

19 Sec. 4. Title 5, chapter 3, article 10, Arizona Revised Statutes, is
20 amended by adding section 5-398.01, to read:

21 5-398.01. Waiver of fine, surcharge or assessment

22 NOTWITHSTANDING ANY OTHER LAW, THE COURT SHALL NOT WAIVE A FINE OR
23 ASSESSMENT IMPOSED PURSUANT TO THIS ARTICLE OR A SURCHARGE IMPOSED PURSUANT
24 TO SECTION 12-116.01 OR 12-116.02 FOR A CONVICTION OF AN OFFENSE LISTED IN
25 THIS ARTICLE.

26 Sec. 5. Section 28-1381, Arizona Revised Statutes, is amended to read:

27 28-1381. Driving or actual physical control while under the
28 influence; trial by jury; presumptions; admissible
29 evidence; sentencing; classification

30 A. It is unlawful for a person to drive or be in actual physical
31 control of a vehicle in this state under any of the following circumstances:

32 1. While under the influence of intoxicating liquor, any drug, a vapor
33 releasing substance containing a toxic substance or any combination of
34 liquor, drugs or vapor releasing substances if the person is impaired to the
35 slightest degree.

36 2. If the person has an alcohol concentration of 0.08 or more within
37 two hours of driving or being in actual physical control of the vehicle and
38 the alcohol concentration results from alcohol consumed either before or
39 while driving or being in actual physical control of the vehicle.

40 3. While there is any drug defined in section 13-3401 or its
41 metabolite in the person's body.

42 4. If the vehicle is a commercial motor vehicle that requires a person
43 to obtain a commercial driver license as defined in section 28-3001 and the
44 person has an alcohol concentration of 0.04 or more.

1 B. It is not a defense to a charge of a violation of subsection A,
2 paragraph 1 of this section that the person is or has been entitled to use
3 the drug under the laws of this state.

4 C. A person who is convicted of a violation of this section is guilty
5 of a class 1 misdemeanor.

6 D. A person using a drug prescribed by a medical practitioner licensed
7 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating
8 subsection A, paragraph 3 of this section.

9 E. In any prosecution for a violation of this section, the state shall
10 allege, for the purpose of classification and sentencing pursuant to this
11 section, all prior convictions of violating this section, section 28-1382 or
12 section 28-1383 occurring within the past thirty-six months, unless there is
13 an insufficient legal or factual basis to do so.

14 F. At the arraignment, the court shall inform the defendant that the
15 defendant may request a trial by jury and that the request, if made, shall
16 be granted.

17 G. In a trial, action or proceeding for a violation of this section
18 or section 28-1383 other than a trial, action or proceeding involving driving
19 or being in actual physical control of a commercial vehicle, the defendant's
20 alcohol concentration within two hours of the time of driving or being in
21 actual physical control as shown by analysis of the defendant's blood, breath
22 or other bodily substance gives rise to the following presumptions:

23 1. If there was at that time 0.05 or less alcohol concentration in the
24 defendant's blood, breath or other bodily substance, it may be presumed that
25 the defendant was not under the influence of intoxicating liquor.

26 2. If there was at that time in excess of 0.05 but less than 0.08
27 alcohol concentration in the defendant's blood, breath or other bodily
28 substance, that fact shall not give rise to a presumption that the defendant
29 was or was not under the influence of intoxicating liquor, but that fact may
30 be considered with other competent evidence in determining the guilt or
31 innocence of the defendant.

32 3. If there was at that time 0.08 or more alcohol concentration in the
33 defendant's blood, breath or other bodily substance, it may be presumed that
34 the defendant was under the influence of intoxicating liquor.

35 H. Subsection G of this section does not limit the introduction of any
36 other competent evidence bearing on the question of whether or not the
37 defendant was under the influence of intoxicating liquor.

38 1. A person who is convicted of a violation of this section:

39 1. Shall be sentenced to serve not less than ten consecutive days in
40 jail and is not eligible for probation or suspension of execution of sentence
41 unless the entire sentence is served.

42 2. Shall pay a fine of not less than two hundred fifty dollars.

43 3. May be ordered by a court to perform community service.

44 4. SHALL PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE
45 DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS

1 FUND ESTABLISHED BY SECTION 41-1651. THIS ASSESSMENT IS NOT SUBJECT TO ANY
2 SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE
3 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY
4 TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL
5 TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
6 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

7 J. Notwithstanding subsection I, paragraph 1 of this section, at the
8 time of sentencing the judge may suspend all but twenty-four consecutive
9 hours of the sentence if the person completes a court ordered alcohol or
10 other drug screening, education or treatment program. If the person fails
11 to complete the court ordered alcohol or other drug screening, education or
12 treatment program and has not been placed on probation, the court shall issue
13 an order to show cause to the defendant as to why the remaining jail sentence
14 should not be served.

15 K. If within a period of sixty months a person is convicted of a
16 second violation of this section or is convicted of a violation of this
17 section and has previously been convicted of a violation of section 28-1382
18 or 28-1383 or an act in another jurisdiction that if committed in this state
19 would be a violation of this section or section 28-1382 or 28-1383, the
20 person:

21 1. Shall be sentenced to serve not less than ninety days in jail,
22 thirty days of which shall be served consecutively, and is not eligible for
23 probation or suspension of execution of sentence unless the entire sentence
24 has been served.

25 2. Shall pay a fine of not less than five hundred dollars.

26 3. May be ordered by a court to perform community service.

27 4. Shall have the person's driving privilege revoked for one year. The
28 court shall report the conviction to the department. On receipt of the
29 report, the department shall revoke the person's driving privilege and shall
30 require the person to equip any motor vehicle the person operates with a
31 certified ignition interlock device pursuant to section 28-3319. In
32 addition, the court may order the person to equip any motor vehicle the
33 person operates with a certified ignition interlock device for more than
34 twelve months beginning on the conclusion of the license suspension or
35 revocation or on the date of conviction, whichever occurs later. The person
36 who operates a motor vehicle with a certified ignition interlock device under
37 this paragraph shall comply with article 5 of this chapter.

38 5. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
39 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON
40 CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS
41 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
42 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
43 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
44 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.

1 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
2 TREASURER.

3 L. Notwithstanding subsection K, paragraph 1 of this section, at the
4 time of sentencing, the judge may suspend all but thirty days of the sentence
5 if the person completes a court ordered alcohol or other drug screening,
6 education or treatment program. If the person fails to complete the court
7 ordered alcohol or other drug screening, education or treatment program and
8 has not been placed on probation, the court shall issue an order to show
9 cause as to why the remaining jail sentence should not be served.

10 M. In applying the sixty month provision of subsection K of this
11 section, the dates of the commission of the offense shall be the determining
12 factor, irrespective of the sequence in which the offenses were committed.

13 N. A second violation for which a conviction occurs as provided in
14 this section shall not include a conviction for an offense arising out of the
15 same series of acts.

16 Sec. 6. Section 28-1382, Arizona Revised Statutes, is amended to read:

17 28-1382. Driving or actual physical control while under the
18 extreme influence of intoxicating liquor; trial by
19 jury; sentencing; classification

20 A. It is unlawful for a person to drive or be in actual physical
21 control of a vehicle in this state if the person has an alcohol concentration
22 of 0.15 or more within two hours of driving or being in actual physical
23 control of the vehicle and the alcohol concentration results from alcohol
24 consumed either before or while driving or being in actual physical control
25 of the vehicle.

26 B. A person who is convicted of a violation of this section is guilty
27 of driving or being in actual physical control of a vehicle while under the
28 extreme influence of intoxicating liquor.

29 C. At the arraignment, the court shall inform the defendant that the
30 defendant may request a trial by jury and that the request, if made, shall
31 be granted.

32 D. A person who is convicted of a violation of this section:

33 1. Shall be sentenced to serve not less than thirty consecutive days
34 in jail and is not eligible for probation or suspension of execution of
35 sentence unless the entire sentence is served.

36 2. Shall pay a fine of not less than two hundred fifty dollars. The
37 fine prescribed in this paragraph and any assessments, restitution and
38 incarceration costs shall be paid before the assessment prescribed in
39 paragraph 3 of this subsection.

40 3. Shall pay an additional assessment of two hundred fifty dollars.
41 If the conviction occurred in the superior court or a justice court, the
42 court shall transmit the monies received pursuant to this paragraph to the
43 county treasurer. If the conviction occurred in a municipal court, the court
44 shall transmit the monies received pursuant to this paragraph to the city
45 treasurer. The city or county treasurer shall transmit the monies received

1 to the state treasurer. The state treasurer shall deposit the monies
2 received in the driving under the influence abatement fund established by
3 section 28-1304.

4 4. May be ordered by a court to perform community service.

5 5. Shall be required by the department, on receipt of the report of
6 conviction, to equip any motor vehicle the person operates with a certified
7 ignition interlock device pursuant to section 28-3319. In addition, the
8 court may order the person to equip any motor vehicle the person operates
9 with a certified ignition interlock device for more than twelve months
10 beginning on the conclusion of the license suspension or revocation or on the
11 date of conviction, whichever occurs later. The person who operates a motor
12 vehicle with a certified ignition interlock device under this paragraph shall
13 comply with article 5 of this chapter.

14 6. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND DOLLARS TO BE
15 DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS
16 FUND ESTABLISHED BY SECTION 41-1651. THIS ASSESSMENT IS NOT SUBJECT TO ANY
17 SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE
18 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY
19 TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL
20 TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
21 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

22 E. Notwithstanding subsection D, paragraph 1 of this section, at the
23 time of sentencing the judge may suspend all but ten days of the sentence if
24 the person completes a court ordered alcohol or other drug screening,
25 education or treatment program. If the person fails to complete the court
26 ordered alcohol or other drug screening, education or treatment program and
27 has not been placed on probation, the court shall issue an order to show
28 cause to the defendant as to why the remaining jail sentence should not be
29 served.

30 F. If within a period of sixty months a person is convicted of a
31 second violation of this section or is convicted of a violation of this
32 section and has previously been convicted of a violation of section 28-1381
33 or 28-1383 or an act in another jurisdiction that if committed in this state
34 would be a violation of this section or section 28-1381 or 28-1383, the
35 person:

36 1. Shall be sentenced to serve not less than one hundred twenty days
37 in jail, sixty days of which shall be served consecutively, and is not
38 eligible for probation or suspension of execution of sentence unless the
39 entire sentence has been served.

40 2. Shall pay a fine of not less than five hundred dollars. The fine
41 prescribed in this paragraph and any assessments, restitution and
42 incarceration costs shall be paid before the assessment prescribed in
43 paragraph 3 of this subsection.

44 3. Shall pay an additional assessment of two hundred fifty dollars.
45 If the conviction occurred in the superior court or a justice court, the

1 court shall transmit the monies received pursuant to this paragraph to the
2 county treasurer. If the conviction occurred in a municipal court, the court
3 shall transmit the monies received pursuant to this paragraph to the city
4 treasurer. The city or county treasurer shall transmit the monies received
5 to the state treasurer. The state treasurer shall deposit the monies
6 received in the driving under the influence abatement fund established by
7 section 28-1304.

8 4. May be ordered by a court to perform community service.

9 5. Shall have the person's driving privilege revoked for at least one
10 year. The court shall report the conviction to the department. On receipt
11 of the report, the department shall revoke the person's driving privilege and
12 shall require the person to equip any motor vehicle the person operates with
13 a certified ignition interlock device pursuant to section 28-3319. In
14 addition, the court may order the person to equip any motor vehicle the
15 person operates with a certified ignition interlock device for more than
16 twelve months beginning on the conclusion of the license suspension or
17 revocation or on the date of conviction, whichever is later. The person who
18 operates a motor vehicle with a certified ignition interlock device under
19 this paragraph shall comply with article 5 of this chapter.

20 6. SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO HUNDRED
21 FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON
22 CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS
23 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
24 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
25 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
26 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
27 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
28 TREASURER.

29 G. Notwithstanding subsection F, paragraph 1 of this section, at the
30 time of sentencing, the judge may suspend all but sixty days of the sentence
31 if the person completes a court ordered alcohol or other drug screening,
32 education or treatment program. If the person fails to complete the court
33 ordered alcohol or other drug screening, education or treatment program and
34 has not been placed on probation, the court shall issue an order to show
35 cause as to why the remaining jail sentence should not be served.

36 H. In applying the sixty month provision of subsection F of this
37 section, the dates of the commission of the offense shall be the determining
38 factor, irrespective of the sequence in which the offenses were committed.

39 I. A second violation for which a conviction occurs as provided in
40 this section shall not include a conviction for an offense arising out of the
41 same series of acts.

42 J. A person who is convicted of a violation of this section is guilty
43 of a class 1 misdemeanor.

1 Sec. 7. Section 28-1383, Arizona Revised Statutes, is amended to read:
2 28-1383. Aggravated driving or actual physical control while
3 under the influence; violation; classification;
4 definition

5 A. A person is guilty of aggravated driving or actual physical control
6 while under the influence of intoxicating liquor or drugs if the person does
7 any of the following:

8 1. Commits a violation of section 28-1381, section 28-1382 or this
9 section while the person's driver license or privilege to drive is suspended,
10 canceled, revoked or refused or while a restriction is placed on the person's
11 driver license or privilege to drive as a result of violating section 28-1381
12 or 28-1382 or under section 28-1385.

13 2. Within a period of sixty months commits a third or subsequent
14 violation of section 28-1381, section 28-1382 or this section or is convicted
15 of a violation of section 28-1381, section 28-1382 or this section and has
16 previously been convicted of any combination of convictions of section
17 28-1381, section 28-1382 or this section or acts in another jurisdiction that
18 if committed in this state would be a violation of section 28-1381, section
19 28-1382 or this section.

20 3. While a person under fifteen years of age is in the vehicle,
21 commits a violation of either:

22 (a) Section 28-1381.

23 (b) Section 28-1382.

24 B. The dates of the commission of the offenses are the determining
25 factor in applying the sixty month provision provided in subsection A,
26 paragraph 2 of this section regardless of the sequence in which the offenses
27 were committed. For THE purposes of this section, a third or subsequent
28 violation for which a conviction occurs does not include a conviction for an
29 offense arising out of the same series of acts.

30 C. The notice to a person of the suspension, cancellation, revocation
31 or refusal of a driver license or privilege to drive is effective as provided
32 in section 28-3318 or pursuant to the laws of the state issuing the license.

33 D. A person is not eligible for probation, pardon, commutation or
34 suspension of sentence or release on any other basis until the person has
35 served not less than four months in prison if the person is convicted under
36 either of the following:

37 1. Subsection A, paragraph 1 of this section.

38 2. Subsection A, paragraph 2 of this section and within a sixty month
39 period has been convicted of two prior violations of section 28-1381, section
40 28-1382 or this section, or any combination of those sections, or acts in
41 another jurisdiction that if committed in this state would be a violation of
42 section 28-1381, section 28-1382 or this section.

43 E. A person who is convicted under subsection A, paragraph 2 of this
44 section and who within a sixty month period has been convicted of three or
45 more prior violations of section 28-1381, section 28-1382 or this section,

1 or any combination of those sections, or acts in another jurisdiction that
2 if committed in this state would be a violation of section 28-1381, section
3 28-1382 or this section is not eligible for probation, pardon, commutation
4 or suspension of sentence or release on any other basis until the person has
5 served not less than eight months in prison.

6 F. In addition to any other penalty provided by law, a person who is
7 convicted under subsection A, paragraph 3, subdivision (a) of this section
8 shall be sentenced to at least the minimum sentence required pursuant to
9 section 28-1381, except that if a person has been convicted of at least two
10 prior violations of section 28-1381, section 28-1382 or this section, or any
11 combination of those sections, or convicted of at least two prior acts in
12 another jurisdiction that if committed in this state would be violations of
13 section 28-1381, section 28-1382 or this section, or any combination of those
14 sections, within a sixty month period, the person shall be sentenced to serve
15 at least the minimum sentence required pursuant to this section.

16 G. In addition to any other penalty provided by law, a person who is
17 convicted under subsection A, paragraph 3, subdivision (b) of this section
18 shall be sentenced to at least the minimum sentence required pursuant to
19 section 28-1382, except that if a person has been convicted of at least two
20 prior violations of section 28-1381, section 28-1382 or this section, or any
21 combination of those sections, or convicted of at least two prior acts in
22 another jurisdiction that if committed in this state would be a violation of
23 section 28-1381, section 28-1382 or this section, or any combination of those
24 sections, within a sixty month period, the person shall be sentenced to serve
25 at least the minimum sentence required pursuant to this section.

26 H. A person who is convicted of a violation of this section shall
27 attend and complete alcohol or other drug screening, education or treatment
28 from an approved facility. If the person fails to comply with this
29 subsection and is placed on probation, in addition to the provisions of
30 section 13-901 the court may order that the person be incarcerated as a term
31 of probation as follows:

32 1. For a person sentenced pursuant to subsection D of this section,
33 for an individual period of not more than four months and a total period of
34 not more than one year.

35 2. For a person sentenced pursuant to subsection E of this section,
36 for an individual period of not more than eight months and a total period of
37 not more than two years.

38 I. The time that a person spends in custody pursuant to subsection H
39 of this section shall not be counted towards the sentence imposed if the
40 person's probation is revoked and the person is sentenced to prison after
41 revocation of probation.

42 J. The court:

43 1. Shall report the conviction to the department. On receipt of the
44 report, the department shall revoke the driving privilege of the person. The
45 department shall not issue the person a new driver license within three years

1 of the date of the conviction and, for a conviction of a violation of
2 subsection A, paragraph 1 or 2 or paragraph 3, subdivision (b) of this
3 section, shall require the person to equip any motor vehicle the person
4 operates with a certified ignition interlock device pursuant to section
5 28-3319. In addition, the court may order the person to equip any motor
6 vehicle the person operates with a certified ignition interlock device for
7 more than twelve months beginning on the conclusion of the license suspension
8 or revocation or on the date of conviction, whichever occurs later. The
9 person who operates a motor vehicle with a certified ignition interlock
10 device under this paragraph shall comply with article 5 of this chapter.

11 2. In addition to any other penalty prescribed by law, shall order the
12 person to pay an additional assessment of two hundred fifty dollars. If the
13 conviction occurred in the superior court or a justice court, the court shall
14 transmit the monies received pursuant to this paragraph to the county
15 treasurer. If the conviction occurred in a municipal court, the court shall
16 transmit the monies received pursuant to this paragraph to the city
17 treasurer. The city or county treasurer shall transmit the monies received
18 to the state treasurer. The state treasurer shall deposit the monies
19 received in the driving under the influence abatement fund established by
20 section 28-1304. Any fine imposed for a violation of this section and any
21 assessments, restitution and incarceration costs shall be paid before the
22 assessment prescribed in this paragraph.

23 3. SHALL ORDER THE PERSON TO PAY A FINE OF NOT LESS THAN SEVEN HUNDRED
24 FIFTY DOLLARS.

25 4. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, SHALL ORDER THE
26 PERSON TO PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS
27 TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND
28 OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS ASSESSMENT IS NOT
29 SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT
30 OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE
31 COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT
32 SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
33 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

34 K. Aggravated driving or actual physical control while under the
35 influence of intoxicating liquor or drugs committed under:

36 1. Subsection A, paragraph 1 or 2 of this section is a class 4 felony.

37 2. Subsection A, paragraph 3 of this section is a class 6 felony.

38 L. For the purposes of this section, "suspension, cancellation,
39 revocation or refusal" means any suspension, cancellation, revocation or
40 refusal.

41 Sec. 8. Title 28, chapter 4, article 3, Arizona Revised Statutes, is
42 amended by adding section 28-1389, to read:

43 28-1389. Waiver of fine, surcharge or assessment

44 NOTWITHSTANDING ANY OTHER LAW, THE COURT SHALL NOT WAIVE A FINE OR
45 ASSESSMENT IMPOSED PURSUANT TO THIS ARTICLE OR A SURCHARGE IMPOSED PURSUANT

1 TO SECTION 12-116.01 OR 12-116.02 FOR A CONVICTION OF AN OFFENSE LISTED IN
2 THIS ARTICLE.

3 Sec. 9. Section 28-8284, Arizona Revised Statutes, is amended to read:
4 28-8284. Violation; classification

5 A. A person who is convicted of a violation of section 28-8282 is
6 guilty of a class 1 misdemeanor and shall be sentenced to serve not less than
7 twenty-four consecutive hours in jail.

8 B. The court shall order the person to pay a fine of not less than two
9 hundred fifty dollars and may order the person to perform not less than eight
10 or more than twenty-four hours of community service.

11 C. A court shall not grant probation to or suspend any part or all of
12 the imposition or execution of a sentence required by this section, except
13 on the condition that the person serve not less than twenty-four consecutive
14 hours in jail and pay a fine of not less than two hundred fifty dollars.

15 D. The court:

16 1. Shall not excuse an offender from spending twenty-four consecutive
17 hours in jail.

18 2. May require the offender to attend traffic safety or alcohol abuse
19 classes at the offender's expense.

20 3. If in the court's opinion the offender has the problem of habitual
21 abuse of alcohol or drugs, shall require the offender to obtain treatment
22 under its supervision.

23 4. SHALL ORDER THE OFFENDER TO PAY AN ADDITIONAL ASSESSMENT OF FIVE
24 HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON
25 CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS
26 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
27 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
28 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
29 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
30 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
31 TREASURER.

32 E. Notwithstanding subsection A of this section, the judge may
33 sentence a person pursuant to section 28-8286 instead of pursuant to
34 subsection A of this section, if all of the following conditions are met:

35 1. The person is convicted of a violation of section 28-8282.

36 2. The prosecutor alleges the provisions of this subsection.

37 3. The court finds that alternative sentencing will serve the best
38 interests of this state and that the person:

39 (a) Has not been convicted of one or more violations of section
40 28-8282 within sixty months of the date of commission of the acts out of
41 which the charges arose. The dates of commission of the offense are the
42 determining factor in applying this paragraph.

43 (b) Was not flying with 0.08 per cent or more by weight of alcohol in
44 the person's blood.

(c) Did not cause serious physical injury as defined in section 13-105 to another person during the same event or course of conduct that resulted in the conviction for which the person is to be sentenced.

Sec. 10. Section 28-8286, Arizona Revised Statutes, is amended to read:

28-8286. Alternative sentencing

If pursuant to section 28-8284, subsection E a court orders a person convicted of a violation of section 28-8282 to be sentenced pursuant to this section, the court:

1. Shall order the person to pay a fine of not less than two hundred fifty dollars.

2. May order the person to perform not less than eight or more than twenty-four hours of community service.

3. May require the person to attend traffic safety or alcohol abuse classes at the person's expense.

4. If in the court's opinion the person has the problem of habitual abuse of alcohol or drugs, shall require the person to obtain treatment under its supervision.

5. Shall not suspend any part or all of the imposition or execution of any sentence required by this section.

6. SHALL ORDER THE PERSON TO PAY AN ADDITIONAL ASSESSMENT OF FIVE HUNDRED DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

Sec. 11. Section 28-8287, Arizona Revised Statutes, is amended to read:

28-8287. Second offense

A. If a person is convicted of a second violation of section 28-8282 or is convicted of a violation of section 28-8282 and has previously been convicted of an act in another state that if committed in this state would be a violation of section 28-8282 within a period of sixty months:

1. The person is guilty of a class 1 misdemeanor.

2. The person shall be sentenced to serve not less than sixty days in jail.

3. The court shall order the person to pay a fine of not less than five hundred dollars.

4. The court shall not grant probation to or suspend any part or all of the imposition or execution of any sentence required by this subsection, except on the condition that the person serve not less than sixty days in jail and pay a fine of not less than five hundred dollars.

1 5. If in the court's opinion the offender has the problem of habitual
2 abuse of alcohol or drugs, the court shall require the person to obtain
3 treatment under its supervision.

4 6. THE PERSON SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND TWO
5 HUNDRED FIFTY DOLLARS TO BE DEPOSITED BY THE STATE TREASURER IN THE PRISON
6 CONSTRUCTION AND OPERATIONS FUND ESTABLISHED BY SECTION 41-1651. THIS
7 ASSESSMENT IS NOT SUBJECT TO ANY SURCHARGE. IF THE CONVICTION OCCURRED IN
8 THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL TRANSMIT THE ASSESSED
9 MONIES TO THE COUNTY TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL
10 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER.
11 THE CITY OR COUNTY TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE
12 TREASURER.

13 B. The dates of the commission of the offense are the determining
14 factor in applying this section.

15 C. A second violation for which a conviction occurs as provided in
16 this section shall not include a conviction for an offense arising out of the
17 same series of acts.

18 Sec. 12. Section 28-8288, Arizona Revised Statutes, is amended to
19 read:

20 28-8288. Third or subsequent offense

21 A. If a person is convicted of a third or subsequent violation of
22 section 28-8282 or is convicted of a violation of section 28-8282 and has
23 previously been convicted of any combination of convictions of section
24 28-8282 or acts committed in another state that if committed in this state
25 would be a violation of section 28-8282 within a period of sixty months:

26 1. The person is guilty of a class 5 felony.

27 2. The person is not eligible for probation, pardon, suspension of
28 sentence or release on any basis except as specifically authorized by section
29 31-233, subsection A or B until the person has served not less than six
30 months in prison.

31 3. The court shall not suspend the imposition of a prison sentence.

32 4. If in the court's opinion the person has the problem of habitual
33 abuse of alcohol or drugs, the court shall require the person to obtain
34 treatment under its supervision.

35 5. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE PERSON
36 SHALL PAY AN ADDITIONAL ASSESSMENT OF ONE THOUSAND FIVE HUNDRED DOLLARS TO
37 BE DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS
38 FUND ESTABLISHED BY SECTION 41-1651. THIS ASSESSMENT IS NOT SUBJECT TO ANY
39 SURCHARGE. IF THE CONVICTION OCCURRED IN THE SUPERIOR COURT OR A JUSTICE
40 COURT, THE COURT SHALL TRANSMIT THE ASSESSED MONIES TO THE COUNTY
41 TREASURER. IF THE CONVICTION OCCURRED IN A MUNICIPAL COURT, THE COURT SHALL
42 TRANSMIT THE ASSESSED MONIES TO THE CITY TREASURER. THE CITY OR COUNTY
43 TREASURER SHALL TRANSMIT THE MONIES RECEIVED TO THE STATE TREASURER.

44 B. The dates of the commission of the offense are the determining
45 factor in applying this section.

1 C. A third or subsequent violation for which a conviction occurs as
2 provided in this section shall not include a conviction for an offense
3 arising out of the same series of acts.

4 Sec. 13. Title 28, chapter 25, article 3, Arizona Revised Statutes,
5 is amended by adding section 28-8292, to read:

6 28-8292. Waiver of fine, surcharge or assessment

7 NOTWITHSTANDING ANY OTHER LAW, THE COURT SHALL NOT WAIVE A FINE OR
8 ASSESSMENT IMPOSED PURSUANT TO THIS ARTICLE OR A SURCHARGE IMPOSED PURSUANT
9 TO SECTION 12-116.01 OR 12-116.02 FOR A CONVICTION OF AN OFFENSE LISTED IN
10 THIS ARTICLE.

11 Sec. 14. Title 41, chapter 11, Arizona Revised Statutes, is amended
12 by adding article 5, to read:

13 ARTICLE 5. PRISON CONSTRUCTION AND OPERATIONS FUND

14 41-1651. Prison construction and operations fund

15 THE PRISON CONSTRUCTION AND OPERATIONS FUND IS ESTABLISHED CONSISTING
16 OF MONIES RECEIVED PURSUANT TO SECTIONS 5-395.01, 5-396, 5-397, 28-1381,
17 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 AND 28-8288. THE STATE
18 DEPARTMENT OF CORRECTIONS SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE
19 SUBJECT TO LEGISLATIVE APPROPRIATION AND SHALL BE USED TO PAY FOR ANY COSTS
20 RELATED TO PRISON OVERCROWDING AND DEPARTMENT SUPPORT AND MAINTENANCE.

21 Sec. 15. Private prison facilities; expansion of existing
22 facilities

23 A. Notwithstanding section 41-1609.01, subsections G and K and section
24 41-1609.02, subsection B, Arizona Revised Statutes, the director of the state
25 department of corrections shall negotiate contracts or amendments to existing
26 contracts for the construction of a total of 1,000 new private prison beds
27 not previously authorized by the legislature, as soon as practicable. The
28 director may consider:

- 29 1. Security.
- 30 2. Inmate management and control.
- 31 3. Inmate programs and services.
- 32 4. Facility safety and sanitation.
- 33 5. Administration.
- 34 6. Food service.
- 35 7. Personnel practices and training.
- 36 8. Inmate health services.
- 37 9. Inmate discipline.

38 B. The contract or amendment shall include the construction and
39 operations of the facilities as required in subsection A of this section.

40 C. The director of the state department of corrections shall determine
41 the appropriate inmate populations for placement in the private facilities
42 identified in subsection A of this section.

1 Sec. 16. Prison beds; authorization; certificates of
2 participation

3 The department of administration may issue a certificate of
4 participation in fiscal year 2003-2004 for the expansion of facilities that
5 will provide 1,000 beds in the prison system. The total cost of construction
6 shall not exceed \$37,496,000 and shall include design, construction and
7 administrative oversight by the department of administration. The proceeds
8 of the certificates of participation may be considered state matching monies
9 for any available federal monies.

10 Sec. 17. Appropriation; prison beds; authority

11 A. To alleviate prison overcrowding, the sum of \$859,200 is
12 appropriated from the corrections fund in fiscal year 2003-2004 to the state
13 department of corrections. The monies appropriated in this subsection may
14 be used by the department for additional beds in either a state operated or
15 privately operated facility for the confinement of persons who are committed
16 to the department. If a private prison contractor is selected, the
17 contractor shall be accredited by the American correctional association
18 standards for adult correctional institutions, provide equal access to
19 rehabilitative programming for inmates and agree to indemnify this state to
20 the extent allowed by Arizona law. The monies appropriated for the purchase
21 of the additional beds shall be considered state matching monies to any
22 available federal monies.

23 B. Notwithstanding section 41-1609.01, Arizona Revised Statutes, if
24 a private prison contractor is selected pursuant to subsection A of this
25 section, the director of the state department of corrections and the private
26 prison contractor shall mutually agree to the length of the contract.

27 C. An Arizona inmate who is confined in a private prison facility
28 under the terms of the contract entered into pursuant to subsection A of this
29 section remains subject to the authority of the director of the state
30 department of corrections. The director of the state department of
31 corrections at any time may transfer the inmate to a state correctional
32 facility or any other state institution.

33 Sec. 18. Appropriation; state department of corrections; county
34 contracts

35 The sum of \$1,700,000 is appropriated from the corrections fund in
36 fiscal year 2003-2004 to the state department of corrections to enter into
37 agreements with Navajo county for housing of fifty state prisoners in
38 existing county jail facilities and with Coconino county for the housing of
39 eighty-eight state prisoners in existing county jail facilities.

40 Sec. 19. Appropriation; department of corrections employees

41 The sum of \$5,000,000 is appropriated from the corrections fund in
42 fiscal year 2003-2004 to the state department of corrections for retention
43 stipends of \$100 per pay period and recruitment bonuses of \$5,160 for
44 correctional officers, sergeants, and lieutenants assigned to the Arizona
45 State Prison Complexes at Lewis, Florence and Eyman. The recruitment bonuses

1 can be offered to employees on a one time basis or payable at \$100 per pay
2 period until the total sum of the bonus is exhausted and is conditional on
3 the employee remaining at the prison complex for a period of two years.

4 Sec. 20. Drug treatment pilot program; appropriation

5 A. On or before July 1, 2004, the state department of corrections
6 shall establish a pilot program at one of its facilities to treat and
7 rehabilitate drug offenders under the jurisdiction of the state department
8 of corrections. The department shall contract with any private or nonprofit
9 entity to provide the drug treatment and rehabilitation services.

10 B. Notwithstanding section 41-1651, Arizona Revised Statutes, as added
11 by this act, the first \$250,000 deposited into the prison construction and
12 operations fund in fiscal year 2003-2004 is appropriated to the state
13 department of corrections to contract with the private or nonprofit entity
14 as required in subsection A of this section. Monies appropriated pursuant
15 to this section are exempt from the provisions of section 35-190, Arizona
16 Revised Statutes, relating to lapsing of appropriations.

17 C. The state department of corrections shall submit an annual written
18 report to the governor, the president of the senate and the speaker of the
19 house of representatives on or before December 31 of each year and provide
20 a copy of this report to the secretary of state and the director of the
21 Arizona state library, archives and public records. The report shall contain
22 statistics on the recidivism rate of inmates who participate in the pilot
23 program established pursuant to this section at the six month, one year and
24 three year anniversary of their completion of the program.

25 Sec. 21. State department of corrections; employer health
26 insurance sweep

27 Notwithstanding any other law, the state general fund charge for the
28 department of corrections for the employer share of state employee health
29 insurance premiums shall be \$53,793,400 in fiscal year 2003-2004.

30 Sec. 22. Appropriation; purpose; nonlapsing

31 A. The sum of \$2,400,000 is appropriated from the corrections fund in
32 fiscal year 2003-2004 to the state department of corrections for:

33 1. The purposes provided in section 15 of this act for fiscal years
34 2003-2004 and 2004-2005.

35 2. The purposes provided in section 16 of this act for fiscal years
36 2003-2004 and 2004-2005.

37 3. The purposes provided in section 17 of this act for fiscal year
38 2004-2005.

39 B. The appropriation made in subsection A of this section is exempt
40 from the provisions of section 35-190, Arizona Revised Statutes, relating to
41 lapsing of appropriations.

APPROVED BY THE GOVERNOR DECEMBER 18, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE DECEMBER 18, 2003.

Second Special Session

Passed the House November 17, 2003

by the following vote: 37 Ayes,

17 Nays, 6 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate December 3, 2003

by the following vote: 22 Ayes,

5 Nays, 3 Not Voting

Klu Blum
President of the Senate

Charmine Ballinger
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF GOVERNOR~~

~~This Bill was received by the Governor this~~

~~_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

H.B. 2019

~~EXECUTIVE DEPARTMENT OF ARIZONA OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State~~

~~this _____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

HOUSE FINAL PASSAGE

as per Joint Conference

Passed the House December 13, 2003,

by the following vote: 52 Ayes,

2 Nays, 6 Not Voting

Jake Flake
Speaker of the House

German L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE

as per Joint Conference

Passed the Senate December 13, 2003,

by the following vote: 23 Ayes,

2 Nays, 5 Not Voting

Ken Bennett
President of the Senate

Charmian Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA

OFFICE OF GOVERNOR

This Bill was received by the Governor

this 15 day of December 2003,

at 8:53 o'clock a. M.

Jennifer Uparra
Secretary to the Governor

Approved this 18 day of

December, 20 03,

at 9th o'clock A. M.

Jon R. Arpaio
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA

OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of December, 20 03,

at 11:08 o'clock A. M.

Janice L. Brewer
Secretary of State

Second Special Session

H.B. 2019